STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

AMEREN ILLINOIS COMPANY d/b/a Ameren Illinois, Petitioner Rate MAP-P Modernization Action Plan- Pricing Annual Update Filing.	))))))	Docket No. 15-0305

REPLY BRIEF OF THE STAFF OF THE ILLINOIS COMMERCE COMMISSION

John L. Sagone
James V. Olivero
Office of General Counsel
Illinois Commerce Commission
160 N. LaSalle St., Suite C-800
Chicago, IL 60601
Phone: (312) 793-2877
Fax: (312) 793-1556
jolivero@icc.illinois.gov
jsagone@icc.illinois.gov

Counsel for Staff of the
Illinois Commerce Commission

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NOW COME the Staff witnesses of the Illinois Commerce Commission ("Staff"), by and through their undersigned counsel, pursuant to Section 200.800 of the Rules of Practice of the Illinois Commerce Commission ("Commission") (83 Ill. Adm. Code 200.800), and respectfully submit their Reply Brief ("RB") in the instant proceeding.

I. INTRODUCTION

A. Overview

In addition to Staff, the following parties submitted Initial Briefs ("IBs") in this proceeding: The Ameren Illinois Company d/b/a Ameren Illinois ("AIC" or "Ameren" or "Company"); The Citizens Utility Board ("CUB") and the Illinois Industrial Energy Consumers ("IIEC") (together, "CUB/IIEC"); and the People of the State of Illinois ("AG"). Staff's IB identified and responded to many if not most of the arguments raised in other parties' IBs. In this Reply Brief, Staff has incorporated many of those responses by reference or citation to Staff's IB. However, in the interest of brevity, Staff has not raised and repeated every argument and response previously addressed in Staff's IB. Thus, any omission of a response to an argument that Staff previously

addressed simply means that Staff stands on the position taken in Staff's IB because further or additional comment is neither needed nor warranted.

B. Legal Standard

II. RATE BASE

A. Uncontested and Resolved Issues

1. Asset Retirement Obligations

B. Contested Issues

1. Cash Working Capital

a. Electric Distribution Tax

The rate-making process under the Energy Infrastructure Modernization Act ("EIMA") (220 ILCS 5/16-108.5) is subject to the Commission's discretion and authority to determine whether rates are just and reasonable in accordance with Commission practice and law. 220 ILCS 5/16-108.5(c) & (d); Ameren Illinois Co. v. Illinois Commerce Comm'n, 2 N.E.3d 1087, 1095-96 (Ill. Ct. App., 2013); Commonwealth Edison Co. v. Illinois Commerce Comm'n, 8 N.E.3d 513, 524-25 (Ill. Ct. App., 2014). EIMA expressly prohibits a utility from recovering above and beyond what would normally be recoverable in a ratemaking case. 220 ILCS 5/16-108.5(c)(6); Ameren Illinois Co., 2 N.E.3d at 1096. The utility must provide sufficient evidence to support the reasonableness of its costs. Ameren Illinois Co., 2 N.E.3d at 1093-94; Commonwealth Edison Co., 8 N.E.3d at 525. Where recovery of costs would artificially increase rates or lacks sufficient support, such recovery is neither just nor reasonable. Ameren Illinois Co., 2 N.E.3d at 1096.

The Company's new proposed methodology for calculating the electricity distribution tax ("EDT") expense payment lead that includes a tax true up payment for

the tax year 2013 that occurred in 2014 ("2013 tax true up payment") and a credit memorandum amount for the year 2012 received in 2014 ("2012 credit memo amount") would artificially inflate the Cash Working Capital ("CWC") requirement. (Staff IB, 5-6.) Further, the Company has failed to provide sufficient evidence to demonstrate its approach is reasonable. Id. at 7. In contrast, Staff's methodology of basing EDT expense payment lead on the four quarterly payment dates is both reasonable and grounded in prior Commission practice. Id. at 5-7. Therefore, the Commission should reject the Company's proposed methodology and adopt Staff's EDT expense payment lead of 29.38 days.

The Company maintains that even though it made a change in methodology of how to calculate the EDT expense payment lead, it would be unreasonable to exclude the impact of the 2013 tax true up payment and 2012 credit memo amount on its EDT expense payment lead because of the large impact it would have on cash flows. (Ameren IB, 10-11.) Staff has demonstrated, however, that since this EDT expense payment lead will be in place not just for the instant case but in the future also,[1] that it is not reasonable for a 2013 tax true up payment and 2012 credit memorandum to affect the calculation of expected cash outlays for future years. (Staff IB, 7.) The Company has also never explained why the EDT liability, but not other taxes such as state and federal income taxes and taxes other than income, must be refined for true ups and credits for the CWC calculation. Further, it is undisputed that the EDT liability is based upon uncertain Company and other Illinois electric utilities' sales, which may affect the magnitude of future true ups or credits, if any. Id. at 7.

[1] The expense leads calculated in this case are planned to be in place for three years. (Ameren Ex. 1.0, 23:453-456.)

The Company also posits that if the Commission determines the change in the lead lag study is too substantial, then the Company's alternative positive payment lead of 0.85 should be used. (Ameren IB, 15.) Staff has demonstrated, however, that Ameren's alternative, which simply changes the date of receipt of the credit memo, is unreasonable because it produces volatile results which vary substantially from Ameren's original proposal and its past cases. (Staff IB, 8-9.)

For the above reasons, the Commission should adopt Staff's EDT expense payment lead of 29.38 days. The AG and CUB/IIEC agree Staff's calculation should be adopted. (AG IB, 14; CUB/IIEC IB, 5.)

b. Collection Lag

C. Original Cost Determination

D. Recommended Rate Base

1. Filing Year

2. Reconciliation Year

III. OPERATING REVENUES AND EXPENSES

A. Uncontested and Resolved Issues

1. State Income Tax

2. Charitable Contributions

3. Advertising Expenses (but for 3.b.i.)

a. AIC Self Disallowances

b. Staff Adjustments

1. Educational and Informational Advertising

2. General Advertising Expense

c. Undocumented Account 909 Expenses

4. Safety Awareness and Recognition Spending (but for 3.b.ii.)

5. Outside Services

6. Industry Dues

7. Injuries and Damages

8. Rate Case Expense

B. Contested Issues

1. Advertising Expense

2. Safety Awareness and Recognition Spending

The Commission should accept Staff's adjustment to disallow the cost of departmental safety-related awards and recognition. As Staff has explained, these costs represent a duplicative layer of compensation beyond normal wages and the safety-related incentive compensation plans. (Staff IB, 14.)

Ameren cites to two sections of EIMA as a basis for expressly allowing the recovery of the safety recognition awards. The first section of EIMA cited by AIC is Section 5/16-108.5(c)(1). That section provides in part as follows:

> The performance-based formula rate approved by the Commission shall do the following:
> (1) Provide for the recovery of the utility's actual costs of delivery service that are prudently incurred and reasonable in amount consistent with Commission practice and law.

However, Section 5/16-108.5(c)(1) does not presume that every cost is prudent and reasonable and the burden of proof to demonstrate that the amount claimed is reasonable and prudent falls squarely on the utility. *See e.g.*, Business and Professional People for the Public Interest et al. v. The Illinois Commerce Commission et al, 146 Ill.2d 175, 255 (1991); Ameren Illinois Co., 2 N.E.3d at 1093-94; Commonwealth Edison Co., 8 N.E.3d at 525. Ameren has failed to meet that burden.

Staff has recommended these amounts for safety recognition awards be disallowed as they are a duplicative layer of compensation. (Staff IB, 14.) By being a duplicative layer of compensation, it is clear that these amounts are not prudent or reasonable in amount. Id. Ameren's argument is based on the premise that because these costs were incurred for delivery services, they must be prudently incurred and reasonable in amount. If that were the case, any other parties to a formula rate proceeding would never be able to contest these amounts. That is not what the statute intended. See, e.g., Ameren Illinois Co., 2 N.E.3d at 1095-96; Commonwealth Edison Co., 8 N.E.3d at 524-25. Staff routinely questions and makes disallowances of the utility's actual costs of delivery services. Staff has explained in detail why these safety recognition awards are duplicative of other compensation provided by Ameren.

While safety related awards may arguably encourage Company employees to be aware of safety issues, these employees already receive a base pay, incentive compensation, and other benefits. (Staff IB, 14-15.) The safety related awards are therefore duplicative of other compensation paid to Company employees. Ratepayers

should not be required to pay additional money to motivate the same employees to be aware of safety issues.

In addition, in Docket No. 13-0301, the Commission expressed concern with safety related expenses, stating:

> Generally, AIC believes such purchases are reasonable and prudent because they supposedly encourage employees and contractors to work safely and recognize them for their efforts when they do so. *Such incentives and rewards, however, serve the same purpose as safety related incentive compensation programs. AIC already recovers safety related incentive compensation expenses under Section 16-108.5(c)(4)(A) of the Act.*

Ameren Illinois Co., ICC Order Docket No. 13-0301, 59-60 (Dec. 9, 2013) (emphasis added) ("Ameren 2013 Formula Rate Order").

Ameren argues that it would seem Staff agrees that safety recognition costs are prudent and reasonable. (Ameren IB, 49.) This is inaccurate. While Staff agreed in discovery to number of questions concerning safety recognition awards, Staff did not agree that these costs were prudent and reasonable and has always argued they are duplicative of other compensation to Company employees. Ameren has failed to meet its burden of proof that these duplicative costs for safety recognition awards are reasonable and prudent and the statute section cited does nothing to support their argument.

The second section of EIMA cited by AIC as support of allowing the safety recognition awards is Section 5/16-108.5(c)(4)(A). That section provides in part as follows:

> The performance-based formula rate approved by the Commission shall do the following:
> (4) Permit and set forth protocols, subject to a determination of prudence and reasonableness consistent with Commission practice and law, for the following:

> (A) recovery of incentive compensation expense that is based on the achievement of operational metrics, including metrics related to budget controls, outage duration and frequency, safety, customer service, efficiency and productivity, and environmental compliance. …

Ameren's argument regarding the applicability of this section to safety recognition awards seems to be that because this section does not define to whom incentive compensation expense related to safety is paid, when it is given or the form it takes, it is given to incentivize safety metrics. (Ameren IB, 50.) Ameren has misconstrued the language of this section and incorrectly broadened its scope to encompass safety recognition awards.

Section 5/16-108.5(c)(4)(A) of EIMA clearly only references "incentive compensation expense." No mention of safety recognition awards or similar type of expenses is mentioned in this section of EIMA. Incentive compensation expenses are separate expenses from safety recognition awards, as has been pointed out by Staff. (Staff Ex. 9.0, 3-4.) The Commission has recognized this fact as well. As cited above in the Ameren 2013 Formula Rate Order, the Commission noted that AIC already recovers safety related incentive compensation expenses under Section 16-108.5(c)(4)(A) of the Act. Ameren 2013 Formula Rate Order at 59-60. As such, Ameren is erroneously trying to expand the meaning of incentive compensation expense to include safety recognition awards.

When interpreting a statute, the primary objective is to ascertain and give effect to the intent of the legislature. Metro Utility Co. v. Illinois Commerce Commission, 262 Ill.App.3d 266, 274 (1994). The best indication of legislative intent is the statutory language itself. Id. Clear and unambiguous terms are to be given their plain and ordinary meaning. West Suburban Bank v. Attorneys Title Insurance Fund, Inc., 326

Ill.App.3d 502, 507 (2001). Moreover, where statutory provisions are clear and unambiguous, the plain language must be given effect, without reading into the language any exceptions, limitations, or conditions the legislature did not express. Davis v. Toshiba Machine Co., 186 Ill.2d 181, 184-185 (1999).

Neither of the EIMA sections cited by Ameren expressly allows for recovery of the disputed safety recognition awards. The utility bears the burden of demonstrating that the costs it seeks to recoup from ratepayers are reasonable and Ameren has failed to show how these expenses are not duplicative of other compensation provided to its employees. Therefore, the disallowance for safety recognition awards calculated by Staff should be allowed by the Commission.

C. Recommended Operating Revenues and Expenses

1. Filing Year

2. Reconciliation Year

IV. COST OF CAPITAL AND RATE OF RETURN

A. Uncontested and Resolved Issues

1. Cost of Capital and Overall Rate of Return on Rate Base

V. RECONCILIATION

VI. REVENUE REQUIREMENT

A. Recommended Revenue Requirement

1. Filing Year

2. Reconciliation Year

3. Net Revenue Requirement

VII. OTHER ISSUES

A. Uncontested and Resolved Issues

1. Incremental Plant Investments

VIII. CONCLUSION

WHEREFORE, for all of the following reasons, Staff respectfully requests that the Commission's order in this proceeding reflect all of Staff's recommendations regarding AIC's request for approval of its updated cost inputs for its Modernization Action Plan - Pricing tariff, Rate MAP-P and corresponding new charges.

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Respectfully submitted,

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JOHN L. SAGONE
JAMES V. OLIVERO
Staff Counsel

JAMES V. OLIVERO
Office of General Counsel
Illinois Commerce Commission
527 East Capitol Avenue
Springfield, IL 62701
Phone: (217) 785-3808
jolivero@icc.illinois.gov

JOHN L. SAGONE
Office of General Counsel
Illinois Commerce Commission
160 North LaSalle St., Suite C-800
Chicago, IL 60601
Phone: (312) 792-2877
jsagone@icc.illinois.gov